

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF3626
)	EEOC NO.: 21BA82307
GLADYS CARRERO)	ALS NO.: 09-0610
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box presiding, upon Gladys Carrero's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008CF3626; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On June 19, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged in her charge that her former employer Provena St. Joseph Hospital, ("Employer") discharged her because of her national origin, Puerto Rico, in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On May 21, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On June 11, 2009, the Petitioner filed her first timely request for review. On July, 15, 2009, after the Respondent stated it wished to further investigate the Petitioner's charge, the Commission entered an order vacating the Respondent's dismissal of the Petitioner's charge and remanding the charge to the Respondent for further investigation. On September 24, 2009, the Respondent again dismissed the Petitioner's charge for Lack of Substantial Evidence. On October 23, 2009, the Petitioner timely filed the instant Request.
2. The Petitioner was employed as a Housekeeper/Environmental Services Associate. The Employer first hired the Petitioner as a part-time employee on January 30, 2006. The Petitioner became a full-time employee on January 6, 2008.
3. Between November 15, 2006, and October 10, 2007, the Employer documented that it had progressively disciplined the Petitioner for various infractions and work performance issues.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

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On October 10th, the Employer issued the Petitioner a final corrective action, which warned the Petitioner that any additional infractions might result in further corrective action up to and including termination.

4. On January 31, 2008, members of the Employer's managerial staff met with the Petitioner to discuss complaints about the Petitioner's work performance. One of the managers subsequently obtained approval from the Employer's Human Resources department to discharge the Petitioner because the Petitioner had failed to demonstrate improvement in her work performance.
5. Thereafter, on February 7, 2008, the Employer issued the Petitioner a notice of termination due to the Petitioner's failure to demonstrate improvement in her work performance.
6. The Respondent determined the Employer had also discharged employees of non-Puerto Rican national origin for poor work performance.
7. However, the Petitioner contends in her charge and her Request that the Employer discharged her because of her national origin, and that that the Employer did not discharge similarly situated non-Puerto Rican employees, whose performance was no better than the Petitioner's, under similar circumstances.
8. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge because the evidence was insufficient to establish a *prima facie* case of discrimination. Specifically, there was no substantial evidence the Employer had treated a similarly situated employee outside of the Petitioner's protected class more favorably under similar circumstances.

CONCLUSION

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.)

The Commission finds there is no substantial evidence that the Employer discharged the Petitioner because of her national origin. Despite the Petitioner's belief to the contrary, there is simply no evidence to support her contention that employees who were not of Puerto Rican origin were not also terminated for poor work performance. Further, given the evidence of the Petitioner's lengthy disciplinary history which preceded her ultimate termination, there is no substantial evidence that the Employer's stated reason for terminating the Petitioner was a mere pretext for unlawful national origin discrimination.

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Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Provena St. Joseph Hospital, as Respondents with the Clerk of the Appellate Court within 35 days after the date of service of this order.

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Entered this 12th day of May 2010.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box